

IKIGAI LAW CONTRACT DRAFTING COMPETITION 2019

PROBLEM STATEMENT AND CASE BRIEF

IN ASSOCIATION WITH



CASE BRIEF

DETAILS OF STEREOS AND TRONIKS TRANSACTION CONFIDENTIAL INSTRUCTIONS FOR THE COUNSELS OF WEST COAST STEREOS ONLY

Note: For participants from law schools outside India, all references to India and Indian law may, where the context allows, be substituted by the local laws as applicable in the place where such law schools are located.

BACKGROUND

1. **West Coast Stereos Pvt. Ltd.** (“Stereos”) is an Indian technology company, incorporated and headquartered in New Delhi. Stereos specializes in developing creative audio equipment and has developed a premium line of headphones and speakers that have been a runaway hit in the Indian market. Stereos’ headphones, in particular, are often spotted in music videos being sported by some of the most popular DJs and musicians in India. The headphones possess technology and features, the likes of which have not been used in the audio industry.
2. While Stereos retails its products through its website, it is considering entering into a transaction wherein it will be manufacturing and supplying its new line of headphones – code named “Radikal Beats” - to a third party and such third party will white label the headphones and supply them under its own brand. Effectively, Stereos will not have any brand association with the Radikal Beats line of headphones. The reason that Stereos wants to enter into this transaction is that it considers Radikal Beats to be too expensive and risky for the Indian market, besides that the technology itself is in its infancy, and it would not want the Stereos brand to be directly associated with a failed product, if that were to happen. At the same time Stereos wants to test the product in the Indian market first (a relatively small market), so that if the product gains reasonable traction then Stereos would like to launch the product globally under its own brand name.
3. **Troniks Pte. Ltd.** (“Troniks”) is a retailing giant based out of Singapore with a chain of electronic appliances stores in Singapore, New Delhi, Hong Kong, Jakarta, Colombo, and Dubai. Troniks is an established market player in these cities and generates tens of millions of US Dollars in annual

turnover. The recorded profit from its 135 (one hundred and thirty-five) stores in for the F.Y. 2018-2019 was US Dollars 6 (six) Million. Troniks is known for selling luxury and high-end goods at cheap prices under its home label “Troika”. Stereos has approached Troniks to white label and retail Radikal Beats under the “Troika” label.

4. You are an associate at a New Delhi-based law firm and Stereos is your firm’s client. Stereos has come to your partner and you for advice on a proposed transaction and has required you to draft an agreement for the same.

THE PRODUCT

5. Stereo’s new line of headphones are revolutionary. The headphones are Bluetooth 5.0 and NFC enabled and equipped with a 5800 (five thousand and eight hundred) mAH battery. The headphones support wireless charging as well as USB charging vide a C-Type charging port, such that when you charge through the C-Type cable the headphones are fully charged in 30 (thirty) minutes. The headphones also support active noise cancellation and automatic bass amplification by automatically detecting the depth of noise around the user. Further, Radikal Beats are IP68 certified, meaning that they are water and dust resistant.
6. The headphone’s earcups are detachable and when detached, individual earcups are then usable as speakers. Further, since there is an individual battery in each earcup with 2,600 (two thousand and six hundred) mAH capacity, the right earcup can also provide reserve charging to your cellphone. The headphones are R&D-d in New Delhi and have been granted patent protection in India.
7. Stereos is designing a proprietary mobile application (“App”) which should be ready for testing within thirty days’ time. Once a user’s mobile phone is paired with the headphones, the App will collect usage data, adjust the equalizer settings of the headphones, and enable the users to check the battery usage and track the location of the headphone. The application can also be used to play music and be enabled with identifying songs that are playing in the vicinity. The application can manage to do this by recording the song and mapping it against a songs database. Furthermore,

the headphones can help gauge the mood of the user by sensing variations in heartbeat and body temperature. The headphones can even detect swinging of the head to gauge if it is in sync with the rhythm to determine whether the user is enjoying the music and then the App could recommend similar music to the user. Advanced machine-learning tools would help the App learn what music to recommend on the basis of the time of the day, location of the user, the weather and the mood of the user.

THE DEAL

8. Stereos' proposal to Troniks is as follows:

- a. Stereos will manufacture/acquire and ship 20,000 (twenty thousand) units of Radikal Beats (to be sold at USD 275.99 per unit) during a two-year period. The headphones shall be branded as "Troika" and Stereos' name and branding will not appear on the headphones. The units shall be shipped to Troniks' designated warehouses in New Delhi, with additional pieces being shipped on an on-going order basis.
- b. Troniks shall have the right to exclusively sell and distribute the headphones and any of its variants in India for a period of two years from the execution date of the proposed agreement. Troniks cannot sell the headphones outside of India. The term of the agreement and the exclusivity may be extended by Stereos at its sole discretion. After the expiry of the agreement, Stereos will be free to supply Radikal Beats and any variations under its own brand in any part of the World.
- c. The marketing responsibilities of the headphones shall be borne exclusively by Troniks. Troniks shall also provide the specifications for the packaging of the headphones, including the product warranty and disclaimer labels that have to be placed on each of the boxes to be acceptable for sale in the individual jurisdictions.
- d. Troniks will pay, as consideration, US Dollars 150,000 as retainer fees for each of the years that the agreement remains valid, in addition to the manufacturing fees of US Dollars

3,500,000 for 20,000 units of Radikal Beats. The fee will be paid proportionate to the number of units supplied by Stereos within thirty days of receipt.

- e. Stereos shall supply 2000 units to the Troniks warehouse in India within one month of the execution of the proposed agreement.

CLIENT'S INTRUCTIONS

- 9. While your client has agreed to the commercials provided above, it has concerns regarding a few issues. The major concerns have been listed below:
 - a. Your client wants to make it clear that it will never be liable for any of the damages, losses, or/and claims arising from the use of the headphones. Your client has informed you that its R&D team has been testing out Radikal Beats extensively and identifying any glitches in them. The researchers have informed you that if the headphones are routinely overcharged or substantially overheated, then there is a 0.75% chance that it might short-circuit, and there is a 0.00025% chance that it might explode. While the likelihood of such events is very low and Troniks has been informed of the same, your client wants sufficient safeguards in place. It does not want any liability or damages claim arising against it, especially with regards to loss of reputation or goodwill. Stereos is only going to contract-manufacture the headphones from manufacturers located in China and shall ship it from there. Given that this is new technology and Troniks has decided to take on the risk for deploying it on scale, your client would like a comprehensive and detailed indemnities clause. You have the freedom to provide for specific indemnities if needed and you think fit.
 - b. Your client wants access to sales information and data, as well as marketing information used by Troniks with regards to the sale of the headphones. The purpose is that Stereos wishes to sell the headphones under its own name and label after the expiry of the term of the agreement, if commercially feasible. The information will be useful for deducing the appropriate sales strategy. However, in the interest of fairness your client is agreeable to a confidentiality clause with regards to sharing of such information.

- c. The App shall be licensed by Stereos to Troniks, and any user data collected by Troniks shall be shared with Stereos. The sharing of any data must be in compliance with the applicable data protection laws of India. Stereos is adamant that it shall not be liable for any data breach or leaks that may take place for any reason whatsoever.
 - d. Your client is also concerned about the receipt of the payments and retainer fees, considering that it is about to undertake a substantial manufacturing order. It wants your assistance in ensuring that none of its payments are delayed or pending at any time during the term of the agreement. It also wants to ensure that the termination of the agreement is subject to substantial deterrence.
 - e. Your client also wants to ensure that dispute resolution is always subject to an arbitration proceeding.
10. Your partner has advised you to find appropriate precedents for the aforementioned arrangement, possibly looking at manufacturing and supply agreements. Your partner has advised you to use phrases such as “manufacturing agreement”, “contract manufacturing agreement”, “wholesale manufacturing and sale agreement”, “sale agreement”, and “service agreement” to research appropriate precedents. Databases you can use for your research includes the U.S. Securities and Exchange Commission’s EDGAR database, available at <https://www.sec.gov/edgar.shtml>. Your partner has further advised you to review enough agreements in the public domain to ensure that you are able to determine the prevalent market practices with regards to similar transactions. Lastly, while drafting this agreement, you should bear in mind the concerns of your client but cannot retract from the position already agreed to by the parties.
11. You have been directed by your partner to also prepare a product warranty and disclaimer note to be supplied with the headphones to its purchasers. This note should disclaim the liability of the client. Your partner expects this note to not exceed 500 words but could be shorter as well.

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